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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,167	01/30/2004	Edwin A. Sisson	MGP.P.US0081	7783

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EXAMINER

BRUENIES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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03/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/769,167

Applicant(s)

SISSON ET AL.

Examiner

CHRISTOPHER P. BRUENJES

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-40, 58-63 and 81-185 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-40, 58-63 and 81-185 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2006 and 30 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20060110
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

WITHDRAWN REJECTIONS

1. All of the rejections of record in the Office Action mailed December 7, 2005 have been withdrawn due to the amendments in the Paper filed August 21, 2006.

Claim Objections

2. Applicant is advised that should claims 155-165 be found allowable, claims 166-176 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 27-40, 58, 60-63, 81-95, 97, 131-143 are rejected under 35 U.S.C. 102(b) as being anticipated by Kim et al (USPN 5,314,987).

Kim et al anticipate a colored transparent bottle or container (col.6, l.59-62). The article comprises a thermoplastic polymer matrix made of polyethylene terephthalate and a plurality of

domains comprising an incompatible filler formed of nylon and specifically MXD6 nylon, which is a gas barrier strengthening filler (col.2, 1.60-62). The incompatible filler forms between 0.5 and 50% of the article and the thermoplastic polymer forms 50 to 99.5% (table 1, col.8). The domains inherently have a range of dimensions in the axial plane within a range of from about 400nm to about 700nm, because the reflection of light off of the domains causing the bottle to have a yellowish or green color, which are wavelengths within the above range. An effective amount of a light absorbing composition in the form of cobalt octoate is added to the blend to neutralize the yellowish color (col.4, 1.44-52). Because article is neutralized in color by the addition of cobalt octoate the total amount of relative light available for reflectance is inherently less than 7.5. The colored transparent article is of a single or multilayer construction (col.6, 1.63-65). Cobalt octoate acts as a colorant or pigment because it adds a bluish color to the article.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 27-40, 58-63 and 81-185 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al (USPN 5,314,987).

Kim et al anticipate a colored transparent bottle or container (col.6, l.59-62). The article comprises a thermoplastic polymer matrix made of polyethylene terephthalate and a plurality of domains comprising an incompatible filler formed of nylon, which obviously includes Nylon 6 and specifically MXD6 nylon, which are gas barrier strengthening filler (col.2, l.60-62). It is also obvious in the formation of bottles to modify polyethylene terephthalate with isophthalic acid. The incompatible filler forms between 0.5 and 50% of the article and the thermoplastic polymer forms 50 to 99.5% (table 1, col.8). An effective amount of a light absorbing composition in the form of cobalt octoate is added to the blend to neutralize the yellowish color (col.4, l.44-52). Cobalt octoate acts as a colorant or pigment because it adds a bluish color to the article. The colored transparent article is of a single or multilayer construction (col.6, l.63-65).

Kim et al fail to explicitly teach that at least some of the domains fall within the claimed range of 400nm and 700nm or that an effective amount of one or more light absorbing compositions are added in the manner claimed. However, at least some of the domains obviously have a range of dimensions in the axial plane within a range of about 400nm to about 700nm, because polyethylene terephthalate and nylon are transparent plastics and for the blend to be producing a yellowish or green color at least some of the domains of polyamide must have dimensions correlating to the respective wavelength of that color to cause the reflection seen as color by the viewer. Cobalt octoate is a light absorbing composition because it creates blue

colors and because the article is neutralized in color by the addition of cobalt octoate the total amount of relative light available for reflectance is obviously less than 7.5.

Regarding claims 96, 98-130, and 144-185, Kim et al fail to explicitly teach adding colors other than bluish cobalt octoate, however it would have been obvious to one having ordinary skill in the art to add red and/or yellow colorants in addition to the bluish cobalt octoate to the article depending on the intended end color or aesthetic appeal of the article.

Response to Amendment

8. The declaration under 37 CFR 1.131 filed on February 27, 2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the Takeda et al or Weaver et al references.

The declaration claims that the invention being claimed in the subject patent application was conceived and reduced to practice before October 17, 2003 (see paragraph 7 of the declaration). However, the filing dates of both Weaver et al and Takeda et al are prior to October 17, 2003 swearing back as far as October 17, 2003 does not render the references non prior art.

9. The declaration under 37 CFR 1.132 filed February 27, 2006 is sufficient to overcome the rejection of claims 1-51 based upon Kim et al, Takeda et al, Weaver et al, and Cahill et al.

Response to Arguments

10. Applicant's arguments with respect to claims 1-51 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER P. BRUENJES whose telephone number is (571)272-1489. The examiner can normally be reached on Monday thru Friday from 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher P Bruenjes
Examiner
Art Unit 1794

/C. P. B./
Examiner, Art Unit 1794
March 3, 2008

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1794